

## Nuclear Regulatory Commission

## § 63.101

(c) DOE shall implement a program of reporting specific events and conditions that is the same as that specified in 10 CFR 72.75.

(d) The requisite notification must be as specified in the applicable regulation. By an appropriate method listed in § 63.4 of this chapter, written reports must be submitted to NRC addressed: ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555-001; and to the NRC onsite representative. DOE shall also furnish the report to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter.

[66 FR 55792, Nov. 2, 2001, as amended at 68 FR 58815, Oct. 10, 2003]

### § 63.74 Tests.

(a) DOE shall perform, or permit the Commission to perform, those tests the Commission considers appropriate or necessary for the administration of the regulations in this part. This may include tests of—

- (1) Radioactive waste,
- (2) The geologic repository, including portions of the geologic setting and the structures, systems, and components constructed or placed therein,
- (3) Radiation detection and monitoring instruments, and
- (4) Other equipment and devices used in connection with the receipt, handling, or storage of radioactive waste.

(b) The tests required under this section must include a performance confirmation program carried out in accordance with subpart F of this part.

### § 63.75 Inspections.

(a) DOE shall allow the Commission to inspect the premises of the geologic repository operations area at the Yucca Mountain site and adjacent areas to which DOE has rights of access.

(b) DOE shall make available to the Commission for inspection, on reasonable notice, records kept by DOE pertaining to activities under this part.

(c)(1) DOE shall, on requests by the Director, Office of Nuclear Material Safety and Safeguards, provide rent-free office space for the exclusive use of the Commission inspection personnel.

Heat, air-conditioning, light, electrical outlets, and janitorial services must be furnished by DOE. The office must be convenient to and have full access to the facility and must provide the inspector both visual and acoustic privacy.

(2) The space provided must be adequate to accommodate two full-time inspectors, and other transient NRC personnel and will be generally commensurate with other office facilities at the Yucca Mountain site geologic repository operations area. A space of 250 square feet either within the geologic repository operations area's office complex or in an office trailer or other onsite space at the geologic repository operations area is suggested as a guide. For locations at which activities are carried out under licenses issued under other parts of this chapter, additional space may be requested to accommodate additional full-time inspectors. The office space provided is subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) DOE shall afford any NRC resident inspector assigned to the Yucca Mountain site or other NRC inspectors identified by the Regional Administrator as likely to inspect the Yucca Mountain facility, immediate unfettered access, equivalent to access provided regular employees, after proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

### § 63.78 Material control and accounting records and reports.

DOE shall implement a program of material control and accounting (and accidental criticality reporting) that is the same as that specified in §§ 72.72, 72.74, 72.76, and 72.78 of this chapter.

## Subpart E—Technical Criteria

### § 63.101 Purpose and nature of findings.

(a)(1) Subpart B prescribes the standards for issuance of a license to receive and possess source, special nuclear, or

byproduct material at a geologic repository operations area at the Yucca Mountain site. In particular, § 63.41(c) requires a finding that the issuance of a license will not constitute an unreasonable risk to the health and safety of the public. The purpose of this subpart is to set out the performance objectives for postclosure performance of the geologic repository and other criteria that, if satisfied, support a finding of no unreasonable risk. Postclosure performance objectives for the geologic repository include a requirement to limit radiological exposures to the reasonably maximally exposed individual, a requirement to limit releases of radionuclides to the accessible environment to protect ground water, and a requirement to limit radiological exposures to the reasonably maximally exposed individual in the event of human intrusion (see § 63.113(b), (c), and (d), respectively).

(2) Although the postclosure performance objectives specified at § 63.113 are generally stated in unqualified terms, it is not expected that complete assurance that the requirements will be met can be presented. A reasonable expectation, on the basis of the record before the Commission, that the postclosure performance objectives will be met, is the general standard required. Proof that the geologic repository will conform with the objectives for postclosure performance is not to be had in the ordinary sense of the word because of the uncertainties inherent in the understanding of the evolution of the geologic setting, biosphere, and engineered barrier system. For such long-term performance, what is required is reasonable expectation, making allowance for the time period, hazards, and uncertainties involved, that the outcome will conform with the objectives for postclosure performance for the geologic repository. Demonstrating compliance will involve the use of complex predictive models that are supported by limited data from field and laboratory tests, site-specific monitoring, and natural analog studies that may be supplemented with prevalent expert judgment. Compliance demonstrations should not exclude important parameters from assessments and analyses simply because they are dif-

ficult to precisely quantify to a high degree of confidence. The performance assessments and analyses should focus upon the full range of defensible and reasonable parameter distributions rather than only upon extreme physical situations and parameter values. Further, in reaching a determination of reasonable expectation, the Commission may supplement numerical analyses with qualitative judgments including, for example, consideration of the degree of diversity among the multiple barriers as a measure of the resiliency of the geologic repository.

(b) Subpart B lists findings that must be made in support of an authorization to construct a geologic repository operations area at the Yucca Mountain site. Prior to closure, § 63.31(a)(1) requires a finding that there is reasonable assurance that the types and amounts of radioactive materials described in the application can be received, possessed, and stored in a geologic repository operations area of the design proposed without unreasonable risk to the health and safety of the public. After permanent closure, § 63.31(a)(2) requires the Commission to consider whether there is a reasonable expectation the site and design comply with the postclosure performance objectives. Once again, although the criteria may be written in unqualified terms, the demonstration of compliance must take uncertainties and gaps in knowledge into account so that the Commission can make the specified finding with respect to paragraph (a)(2) of § 63.31.

#### § 63.102 Concepts.

This section provides a functional overview of this Subpart E. In the event of any inconsistency, the definitions in § 63.2 prevail.

(a) *The HLW facility at the Yucca Mountain site.* NRC exercises licensing and related regulatory authority over those facilities described in section 202 (3) and (4) of the Energy Reorganization Act of 1974, including the site at Yucca Mountain, as designated by the Energy Policy Act of 1992.

(b) *The geologic repository operations area.* (1) These regulations deal with the exercise of authority with respect to a particular class of HLW facility—